

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, November 10, 2010, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** Robert Bartholomew, Vice-Chairman  
Walter Schmidt  
Tom Day  
Nancy Bonniwell  
Rob Schuett

**BOARD MEMBERS ABSENT:** None

**SECRETARY TO THE BOARD:** Nancy M. Bonniwell

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Mary E. Finet, Senior Land Use Specialist  
Scott Schulenburg, BA10:030, petitioner  
Terry Lisowski, BA10:030, architect  
Mark and Jessica Peeters, BA10:035, petitioners  
Dave Sanborn, BA10:035, builder and neighbor  
Tom Milbrath, BA10:035, neighbor  
Anthony Catarozoli, BA10:037, builder  
Fred Storm, BA10:037, neighbor  
Jerri Osenga, BA10:037, neighbor  
Larry Gregg, BA10:037, neighbor  
Jared Grubba, BA10:032, son of the petitioners  
Michael LeMaster, BA10:033, petitioner  
Kevin Dittmar, BA10:036, petitioner  
Nick Mollgaard

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Day *I move to approve the Summary of the Meeting of October 13, 2010, with the following modifications:*

*The words "and the subject structure could have been remodeled to a lesser extent" shall be removed from the end of the sixth sentence in the second paragraph on Page 4.*

*The word "it" shall be removed from the last sentence on Page 10.*

The motion was seconded by Mr. Schmidt and carried with four yes votes. Mr. Schuett abstained because he was not present at the meeting of October 13, 2010.

**NEW BUSINESS:**

**BA10:030 SCOTT AND XUAN THY SCHULENBURG (adjourned from October 13, 2010):**

Mr. Schmidt

*I move to approve the request for a variance from the offset requirement of the Ordinance and the request to rescind the Board's previous condition of approval prohibiting the covered porch on the south side of the residence from being screened or enclosed, to allow the existing covered porch to be enclosed and converted into a mudroom, subject to the following conditions:*

- 1. The proposed construction must be substantially in conformance with the plans dated October 30, 2010.*
- 2. Prior to the issuance of a Zoning Permit, a new Declaration of Restrictions, which declares that portion of the existing Declaration of Restrictions prohibiting the porch from being screened or enclosed at any time to be null and void, shall be recorded in the Waukesha County Register of Deeds office.*
- 3. Prior to the issuance of a Zoning Permit, a detailed cost estimate for the proposed construction must be submitted to the Planning and Zoning Division staff.*
- 4. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.*
- 5. The footprint of the new mudroom may not extend beyond the existing concrete slab.*

*The reasons for the decision are as follows:*

*The proposed construction does not change the floor area ratio and will have no adverse or detrimental effect on any of the neighbors. Therefore, the approval of this request meets the intent and purpose of the Ordinance.*

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for a variance from the offset requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit an existing porch on the south side of the residence to be enclosed and converted into a mudroom, and for **denial** of the request to remove a condition of a previous Board of Adjustment action (File No. BA79:104), taken on October 3, 1979, that prohibited the porch from being "screened or enclosed at any time" and required a Declaration of Restrictions noting that condition to be recorded in the Waukesha County Register of Deeds Office.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The existing porch roof (not including the 9 in. overhang) is only 8.5 ft. from the south lot line and the residence is on the adjacent lot to the south is approximately 1.5 ft. from the lot line. Therefore, if the porch were enclosed, it would only be approximately 10 ft. from the residence on the adjacent lot. In their 1979 decision, the Board indicated that the approval of the request, as conditioned, would allow the previous owner to continue to enjoy a reasonable use of the property consistent with the zoning and will suffer no hardship by reason of the action of the Board or the Ordinance. The property has been used for the last 30 years with the porch roof only. The property contains a two-story residence with a fully exposed basement, a detached garage, and a two-story boathouse. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The approval of this request would not be within the purpose and intent of the Ordinance.

**BA10:035 MARK AND JESSICA PEETERS:**

Mr. Day

*I move to **approve** the request, with the recommended modifications and conditions set forth in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the floor area ratio, open space, and offset requirements and of a special exception from the accessory building floor area ratio requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a new single-family residence and a detached garage, subject to the following modifications and conditions:

1. The new residence and/or detached garage must be reduced in size so the footprint of the new residence and the detached garage does not exceed 1,800 sq. ft. and the total floor area, including the first and second floors of the residence, any covered porches or entries, and the detached garage, but not including any finished living area in the exposed basement of the

residence, does not exceed 3,000 sq. ft. The first floor of the residence must be a minimum of 850 sq. ft. and there must be a garage, either attached or detached, of at least 400 sq. ft. This will result in a maximum floor area ratio of approximately 20.4 % and a minimum open space of approximately 12,917 sq. ft.

2. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
3. The new residence and any decks or patios adjacent to the new residence, must be located in conformance with all locational requirements of the Ordinance.
4. Any sidewalks, walkways, or stairs located along the sides of the residence must be at least three (3) ft. from the side lot lines.
5. No retaining walls shall be located within 75 ft. of the lake or within 5 ft. of the side lot lines.
6. The detached garage must be at least 5 ft. from the edge of the 33 ft. wide platted road right-of-way of Florencetta Heights and at least 5 ft. from the side lot line, as measured to the outer edge of the wall, with overhangs not to exceed 2 ft. in width.
7. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the proposed residence and the proposed location of the detached garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
8. In order to ensure the construction of the new residence and detached garage does not result in adverse drainage onto the adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 7.
9. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height,

bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. A hardship exists with respect to open space, since it is not possible to achieve the minimum required open space of 15,000 sq. ft. on a lot that is only 14,717 sq. ft. in area. Conformance with the maximum permitted floor area ratio of 15% would also be a hardship, as it would permit a maximum total floor area, including the residence and garage, of only 2,208 sq. ft., which is not in keeping with other development in the area. Variances, however, should grant only the minimum relief necessary for a reasonable use of the property and it is felt that the proposed residence is too large for the size of the lot and would not be in keeping with other homes in the neighborhood. A smaller residence, as recommended, would still provide a reasonable use of the property that is not unnecessarily burdensome. Further, if more living space is desired, the petitioners have the option of adding additional finishing living area in the exposed basement level that would not be counted against the floor area ratio or open space requirements.

While a detached garage could be located in conformance with the minimum sideyard offset requirement of 10 ft., that would result in the garage being nearly centered between the side lot lines, which is not in keeping with the pattern of development in the neighborhood and would not be as aesthetically appealing as a garage located closer to the side lot line. However, it is felt that granting an offset variance to permit the garage to be only 3 ft. from the south lot line, as requested, would be more than the minimum relief necessary for a reasonable use of the property and would not allow adequate space for maintenance of the garage, whereas locating the garage at least 5 ft. from the side lot line, as recommended, will facilitate future maintenance of the garage and still be aesthetically pleasing and in keeping with the pattern of development in the neighborhood.

The requested relief from the accessory building floor area ratio requirement is a special exception, rather than a variance. A special exception differs from a variance in that a special exception does not require the demonstration of an unnecessary hardship. However, there must be special conditions of the property, such as the small lot size, and the special exception must be necessary and desirable and must not adversely affect adjacent property owners. When granting special exceptions, the Board must still consider whether the requested special exception would be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare. Conformance with the maximum permitted accessory building floor area ratio of 3% would permit a garage of only 442 sq. ft., which is smaller than a typical two-car garage and would not be practical or desirable. Therefore, the approval of a special exception from the accessory building floor area ratio is both necessary and desirable, in order to permit the construction of a reasonably sized two-car garage. Further, the proposed 24 ft. x 24 ft. garage is the minimal size for a two-car garage and is in keeping with other garages in the area. The garage, as proposed, would not be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood.

As recommended, the new residence and detached garage will not adversely affect the adjacent properties or the lake and will not be contrary to the public interest. Therefore, the approval of variances from the floor area ratio and open space requirements to permit the

construction of a new residence and detached garage and the approval of a variance from the offset requirement and a special exception from the accessory building floor area ratio requirement to permit the construction of a detached garage, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA10:037 JAMES AND SUSAN GRINNEY:**

Mr. Day

*I move to **approve** the request, in accordance with the Staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schuett and carried with four yes votes. Ms. Bonniwell voted no.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the private road setback and offset requirements and of a special exception from the accessory building floor area ratio requirement of the Waukesha Shoreland and Floodland Protection Ordinance, to permit the proposed replacement of the existing 24.32 ft. x 20.4 ft. detached garage with a 36 ft. x 26 ft. detached garage, subject to the following conditions:

1. The new side-entry garage may be no wider than 36 ft. and no deeper than 26 ft., as measured to the outer edges of the walls, with overhangs not to exceed 2 ft. in width.
2. The garage must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
3. The garage may contain an upper-level storage area, only if the garage conforms with the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
4. The garage must be at least 7 ft. from the edge of the 30 ft. wide private road right-of-way known as Lakewood Lane and at least 5 ft. from the west lot line, as measured to the outer edges of the walls.
5. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the proposed garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. The Plat of Survey shall also be updated to show the current configuration of the detached garage on the adjacent lot to the east, which has been reduced in size since the Plat of Survey was prepared on July 8, 2008.
6. A detailed Grading and Drainage Plan, showing existing and proposed grades in the area of the new garage and the re-configured driveway, with elevations at the corners of the garage and along the side lot lines, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure that the construction of the new garage and the re-configuration of the driveway do not result in adverse drainage onto

adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 5.

7. A Certified Survey Map combining Lot 8 of Lakewood Subdivision and the unplatted land on the south side of Lakewood Drive into one lot must be prepared by a registered land surveyor and submitted to the Town of Merton and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff for review and approval. The Certified Survey Map must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit for the detached garage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It would be unnecessarily burdensome to deny the requested setback variance from the private road because that would require the new garage to be located farther from the road than the existing garage and also farther from the road than several other garages in the neighborhood. Granting the requested road setback variance will allow the new garage to be located in line with the existing garage on the adjacent property to the west, which will be more aesthetically pleasing and result in less of an encroachment into the septic replacement area. Further, Lakewood Drive is a private, dead-end road, serving only two properties beyond the subject property, and the proposed garage location will not create a safety hazard or be contrary to the public interest. The proposed replacement garage is farther from the side lot line than the existing garage and granting the requested offset variance will allow the replacement garage to be a side-entry garage, which will be more aesthetically pleasing. Therefore, the approval of the requested variances from the private road setback and offset requirements to permit the construction of the proposed detached garage, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

The requested relief from the accessory building floor area ratio requirement is a special exception, rather than a variance. A special exception differs from a variance in that a special exception does not require the demonstration of an unnecessary hardship. However, there must be special conditions of the property, such as the small lot size, and the special exception must be necessary and desirable and must not adversely affect adjacent property owners. When granting special exceptions, the Board must still consider whether the requested special exception would be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of

adjacent properties and the public interest and welfare. Unless the boathouse is removed, conformance with the maximum permitted accessory building floor area ratio of 3% would permit a new garage of only 650 sq. ft., which is only slightly larger than the existing garage and would not solve the applicants need for additional garage and storage space. Therefore, the approval of a special exception from the accessory building floor area ratio is both necessary and desirable, in order to permit the construction of a new larger garage. Further, the proposed 36 ft. x 26 ft. garage is in keeping with other garages in the area and the garage, as proposed, would not be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood. Therefore, the approval of the requested special exception from the accessory building floor area ratio requirement to permit the construction of the proposed detached garage, with the recommended conditions, is also in conformance with the purpose and intent of the Ordinance.

**BA10:032 DAVID AND ELIZABETH GRUBBA:**

Ms. Bonniwell

*I move to approve the request, with the recommended modifications and conditions set forth in the Staff Report, for the reasons stated in the Staff Report and for the following additional reasons: As conditioned, the approval of this request will allow a reasonable use of the property and permit the construction of a garage that provides sufficient room for the parking of vehicles and the storage of equipment. The property does not currently have a garage and the proposed garage will help to keep the yard neat. With the Wisconsin winters, a garage is necessary, not only for the parking of vehicles, but also to maintain the viability of equipment. Finally, the lot is smaller and narrower than the required minimums, which creates a hardship because the owners cannot conform with Ordinance requirements and still have a reasonable use of their property.*

The motion was seconded by Mr. Schuett and carried unanimously.

The Planning and Zoning Division staff's recommendation was for approval of the request for variances from the road setback, floor area ratio, and open space requirements and of a special exception from the accessory building floor area ratio requirement of the Waukesha County Zoning Code, to permit the construction of a detached garage, subject to the following modifications and conditions:

1. The garage may be no larger than 576 sq. ft., as measured to the outer edges of the walls, with overhangs not to exceed 2 ft. in width. This will permit the construction of a 24 ft. x 24 ft. garage or its equivalent.
2. The garage must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.



3. The garage may contain an upper-level storage area, only if the garage conforms with the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
4. The garage must be at least 25 ft. from the edge of the 50 ft. wide platted right-of-way of Marquette Street, as measured to the outer edge of the wall.
5. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the proposed detached garage, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the subject property and not drain to neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.
7. A Certified Survey Map combining Lot 1 and the West ½ of Lot 2 in Block 8H of the Corrected Plat of Oconomowoc Heights, Section A, and the North ½ of the adjacent vacated alley into one lot must be prepared by a registered land surveyor and submitted to the Town of Oconomowoc for review and approval. The Certified Survey Map must be recorded in the Waukesha County Register of Deed's office and a copy of the recorded Certified Survey Map submitted to the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff, prior to the issuance of a Zoning Permit for the proposed detached garage.
8. The shed that is owned by the applicants, but is located on the adjacent property to the south, must be removed prior to the expiration date of the Zoning Permit for the garage. The shed may not be relocated to a conforming location on the subject property without additional variances from the floor area ratio and open space requirements and an additional special exception from the accessory building floor area ratio requirement.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily

burdensome. Due to the small lot size and narrow lot width, hardships exist with respect to the floor area ratio, open space, and road setback requirements. Conformance with the maximum permitted floor area ratio of 15% would permit an accessory building of only 88 sq. ft. and conformance with the minimum open space requirement of 15,000 sq. ft. is impossible on this 11,026 sq. ft. property. The garage could be located slightly farther from Marquette Street than the 24.2 ft. that is proposed, but it cannot be located in conformance with the minimum road setback requirement of 50 ft. on this 75 ft. wide property, so a 25 ft. road setback is reasonable. Granting a road setback variance to allow the garage to be 25 ft. from the edge of the road right-of-way, as recommended, will allow the garage to be constructed in line with the homes on the subject property and the adjacent property to the south, in a location that does not result in a safety hazard and is not contrary to the public interest. Therefore, the approval of the variances from the road setback, floor area ratio, and open space requirements to permit the construction of a detached garage, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

The requested relief from the accessory building floor area ratio requirement is a special exception, rather than a variance. A special exception differs from a variance in that a special exception does not require the demonstration of an unnecessary hardship. However, there must be special conditions of the property, such as the small lot size, and the special exception must be necessary and desirable and must not adversely affect adjacent property owners. When granting special exceptions, the Board must still consider whether the requested special exception would be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare. Conformance with the maximum permitted accessory building floor area ratio of 3% would permit a garage of only 330 sq. ft., which would allow the construction of only a small one-car garage. That would not be practical or desirable. Therefore, the approval of a special exception from the accessory building floor area ratio is both necessary and desirable, in order to permit the construction of a two-car garage. However, as recommended by the staff, reducing the size of the proposed garage to 576 sq. ft. will still allow a garage that provides adequate storage, but the garage will be more in keeping with the purpose and intent of the Ordinance requirements. The construction of a 576 sq. ft. detached garage, as recommended, would not be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood. Therefore, the approval of a special exception from the accessory building floor area ratio requirement to permit the construction of a 576 sq. ft. detached garage, with the recommended conditions, is also in conformance with the purpose and intent of the Ordinance.

**BA10:033 MICHAEL LeMASTER:**

Mr. Day

*I move to approve the request, in accordance with the Staff's recommendation, with the condition stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the remodeling a non-conforming structure in excess of 50% if its fair market value provision of the Waukesha County Zoning Code, to permit the construction of an addition to the second floor of the duplex residence, subject to the following condition:

Unless the Environmental Health Division approves a Preliminary Site Evaluation authorizing the number of bedrooms in the residence to be increased from four to five, the new "therapy room" may not contain a closet.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The duplex residence is a substantial structure that has been in its present location since 1880, and which has been permitted to be extensively remodeled and updated in the past. It would be a hardship not to permit the proposed minor addition, especially since the proposed addition is in conformance with all locational and area requirements of the Ordinance and will not increase the degree of non-conformity. The proposed addition is not contrary to the public interest and will not adversely affect the adjacent properties. Therefore, the approval of the requested variance from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Ordinance is in conformance with the purpose and intent of the Ordinance.

**BA10:034 JIM GOZDOWIAK (FIELD FARMS 1 LLC):**

Ms. Bonniwell

*I move to **adjourn** the hearing until the next regularly scheduled meeting, which will be on December 8, 2010, because the applicant is not in attendance and we want to ensure that he has an opportunity to explain his request and make his arguments.*

The motion was seconded by Mr. Day and carried unanimously.

**BA10:036 KEVIN DITTMAR:**

Mr. Schmidt

*I move to approve the request to modify Condition No. 10 and Condition No. 3 of the Board of Adjustment's decision of May 10, 2006, to permit the 170 sq. ft. asphalt and concrete parking area on the west side of the residence and the 63 sq. ft. asphalt area near the road on the east side of the residence, which are shown in green on the Site Plan prepared by R.A. Smith National, Inc., to be retained. The stone stairway/walkway on the east side of the residence, portions of which exceed three (3) ft. in width, may also be retained in its current configuration, but no additional increase in width shall*

*be allowed. Further, a Vegetation Plan, showing a buffer of native vegetation running parallel to the shoreline and extending a minimum of two (2) ft. landward of the dock that runs along the shoreline, which is shown on the Site Plan prepared by R.A. Smith National, Inc., with openings for access to the two existing piers, must be prepared by a registered landscape architect, and submitted to the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff for review and approval, no later than March 1, 2011. The openings for access to the two piers shall not be more than six (6) inches wider than the existing piers shown on the Site Plan prepared by R.A. Smith National, Inc. The approved Vegetation Plan must be implemented no later than June 1, 2011.*

*The reasons for the decision are as follows:*

*There is a hardship and the property is unique in its exceedingly small size. The use of the land would be limited and it would be a burden and a hardship if there was no area of grass in use whatsoever and if the area between the patio and lake were taken up with other vegetation, as previously required. The approval of this request, as conditioned, is not adverse to the public and would not create a nuisance.*

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request to modify Condition No. 3 of the conditions placed by the Waukesha County Board of Adjustment on the variances and special exception granted on May 10, 2006 (File No. BA06:033). The staff noted that denial of the request will require the area between the concrete patio and the lake, with the exception of a 16 ft. wide "view corridor", to be planted with a buffer of native vegetation, as shown on the approved Grading and Revegetation Plan. However, the staff recommended that, if desired, a revised Revegetation Plan for the required buffer of native vegetation, prepared by a registered landscape architect, may be submitted to the Waukesha County Department of Parks and Land Use for review and approval, but that plan must be submitted no later than March 1, 2011. The recommendation included a requirement that the required buffer of native vegetation must be planted no later than June 1, 2011.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of the request to eliminate the previously required buffer of native vegetation at the lake shore would not be in conformance with the purpose and intent of the Ordinance. The property is extremely small and almost entirely covered with impervious surfaces. The required buffer of native vegetation at the lake shore will help to mitigate the effects of the large percentage of impervious surface and will be a positive step toward the improvement of the water quality of Okauchee Lake.

The Planning and Zoning Division staff's recommendation was for **approval** of the request to modify Condition No. 10 of the conditions placed by the Waukesha County Board of Adjustment on the variances and special exception granted on May 10, 2006, to permit the paved parking space on the west side of the residence to be retained and to permit the stone stairway/walkway on the east side of the residence to be retained in its current configuration, but with the condition that the landings at the top and bottom of the stairs must be reduced to no more than four (4) ft. in width. However, the Planning and Zoning Division staff's recommendation was for **denial** of the request to modify Condition No. 10 of the conditions placed by the Waukesha County Board of Adjustment on the variances and special exception granted on May 10, 2006, to permit the asphalt area on the east side of the residence to remain.

The Planning and Zoning Division staff's recommendation was that Condition No. 10 be revised as follows:

"The paved parking space on the west side of the residence and the stone stairway/walkway on the east side of the residence may be retained in their current configuration, but the landings at the top and bottom of the stairs must be reduced to no more than four (4) ft. in width. The asphalt area on the east side of the residence must be removed and replaced with mowed grass, as shown on the approved Grading and Revegetation Plan, and/or with planting beds, with the exception that a walkway, no more than four (4) ft. in width, may be installed to connect the stone stairway/walkway on the east side of the residence to the steps leading to the front door of the residence. No additional impervious surfaces shall be permitted on the property. The required modifications must be completed no later than June 1, 2011."

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The desire for a paved parking space is not unreasonable, especially since the property contains only a one-car garage and there is no parking available on the street or elsewhere on the lot. Further, since the Grading and Revegetation Plan, which showed a gravel parking area on the west side of the residence, was approved in 2006, the Planning and Zoning Division staff has come to the realization that over time gravel becomes compacted and will become just as impervious as asphalt or concrete. Therefore, the approval of the request to amend Condition 10 of the variances and special exception granted on May 10, 2006, to permit the paved parking space on the west side of the residence and the stone stairway/walkway on the east side of the residence to be retained in their current configuration, with the landings at the top and bottom of the stairs reduced to no more than four (4) ft. in width is in conformance with the purpose and intent of the Ordinance. However, the request to modify Condition No. 10 of the conditions placed by the Waukesha County Board of Adjustment on the variances and special exception granted on May 10, 2006, to permit the asphalt area on the east side of the residence to remain would be contrary to the previous Board of Adjustment action, which sought to limit the amount of impervious surface on the lot, and would not be in conformance with the purpose and intent of the Ordinance.

**OTHER ITEMS REQUIRING BOARD ACTION:** None.

**ADJOURNMENT:**

Mr. Day *I move to adjourn this meeting at 10:10 p.m.*

The motion was seconded by Mr. Schuett and carried unanimously.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Nancy M. Bonniwell".

Nancy M. Bonniwell  
Secretary, Board of Adjustment